

WILKES, ARTIS, HEDRICK & LANE

CABLE ADDRESS: WILAN
FAX: 202-457-7814

CHARTERED

ATTORNEYS AT LAW

1000 K STREET, N. W.

SUITE 1100

WASHINGTON, D. C. 20006-2897

(202) 457-7800

ANNAPOLIS, MARYLAND
BETHESDA, MARYLAND
FAIRFAX, VIRGINIA
GREENBELT, MARYLAND

RAMSEY L. WOODWORTH
(202) 457-7874

RECEIVED

OCT 23 1996

October 23, 1996

FEDERAL COMMUNICATIONS COMMISSION
OFFICE OF SECRETARY

Mr. William F. Caton, Acting Secretary
Federal Communications Commission
1919 M Street, N.W., Room 222
Washington, D.C. 20554

DOCKET FILE COPY ORIGINAL

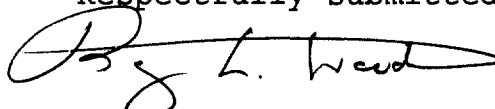
Re: South Bay Regional Public Communications
Authority, Application (FCC Form 600) and
Petition for Waiver, File No. 415919

Dear Mr. Caton:

On behalf of the South Bay Regional Public Communications Authority, enclosed herewith for association with the above-referenced pending application are its Comments filed on October 21, 1996, in WT Docket No. 96-86 concerning the development of operational, technical and spectrum requirements for meeting public safety agency communications requirements through the year 2010.

These Comments are being additionally filed for association with the above-referenced application as they pertain to matters raised in that application.

Respectfully submitted,



Ramsey L. Woodworth
Attorney for South Bay
Regional Public Communications
Authority

Enclosure

cc: (w/enclosure)

Rudolfo M. Baca, Esquire
Jackie Chorney, Esquire
Michele Farquhar, Chief, Wireless Telecommunications Bureau
Terry L. Fishel, Chief, Land Mobile Branch
Robert H. McNamara, Chief, Private Wireless Division
D'Wana Speight, Esquire
David R. Siddall, Esquire
Suzanne Toller, Esquire
License Communications Services, Inc.

No. of Copies rec'd
List ABCDE

043

RECEIVED

OCT 23 1996

BEFORE THE

Federal Communications Commission

WASHINGTON, D. C. 20554

FEDERAL COMMUNICATIONS COMMISSION
OFFICE OF SECRETARY

In the Matter of)
)
The Development of Operational,)
Technical, and Spectrum)
Requirements for Meeting) WT Docket No. 96-86
Federal, State and Local Public)
Safety Agency Communication)
Requirements Through the)
Year 2010)

To: The Commission

**COMMENTS OF SOUTH BAY REGIONAL PUBLIC COMMUNICATIONS
AUTHORITY**

The South Bay Regional Public Communications Authority ("South Bay"), by its attorneys, hereby submits the following comments in response to the Commission's Notice of Proposed Rulemaking ("Notice"), 61 Fed. Reg. 18538 (April 26, 1996), in the above-captioned proceeding.

South Bay is a public authority chartered by the State of California for the purpose of providing consolidated public safety communications services in the densely populated and industrialized South Bay region of Los Angeles County. The cities of El Segundo, Gardena, Hawthorne, and Manhattan Beach, California, utilize the services of South Bay to provide basic police and fire communications services relied upon by approximately 350,000 area residents and workers who commute to factories and offices in the South Bay region. At present, South Bay, relies upon a "hodgepodge" of overburdened VHF and UHF channels, which do not provide adequate interoperability between police and

fire departments, or with neighboring and overlapping jurisdictions. This, as the Notice recognizes, is not a satisfactory situation for public safety agencies. Notice, ¶ 14.

To alleviate these problems and to facilitate implementation of new technologies, South Bay has sought a waiver of the FCC's rules to allow it to use certain vacant Public Land Mobile Service ("PLMS") UHF channels that are immediately adjacent to other UHF channels already used South Bay and other public safety agencies in the Los Angeles area. As the Commission is well aware, Los Angeles, the nation's second largest metropolitan area, is the most spectrum congested area in the United States. Due to the special circumstances facing public safety agencies in the Los Angeles area, the Commission has made special provision in Los Angeles not done elsewhere in the United States for public safety use of the 470-512 MHz UHF band. The PLMS channels requested by South Bay dovetail this special Los Angeles public safety allocation plan.

Public safety use in Los Angeles of the 470-512 MHz band commenced in 1971 with the allocation in Docket 18261 of channels in former TV Channels 14 and 20 for public safety use.¹ Subsequently, in recognition of the special needs facing the Los Angeles County Sheriff's Department, the Commission in 1986 allocated 120 UHF channels in former

¹ Land Mobile-UHF TV Channel Sharing, 30 FCC 2d 221 (1971).

TV Channel 16 for use by the Sheriff's Department and other public safety entities.² And in 1989, in recognition of the special needs facing several communities in the Los Angeles area, the Commission allocated an additional 17 channel pairs in former TV Channels 14 and 20 for public safety use.³ These channels had been previously allocated for PLMS use, the demand for which had drastically declined with the advent of cellular telephone service. At that time, PLMS channels sought by South Bay were retained for PLMS use, reserved for use only by existing radio common carrier (RCC) licensees of the frequencies. Flexible Allocation of Frequencies, supra, ¶22. Shortly thereafter, however, the remaining RCC licensees relinquished their licenses for the frequencies which have remained fallow to this day. Currently, they are reserved for control use purposes by wide-area paging systems, a function for which paging systems now use satellite circuits. Thus, the channels are likely to remain vacant unless or until the Commission determines a new use.

The requested PLMS channels would allow for the consolidation of all South Bay communications on a single

² Additional Channels in the Band 470-512 MHz for Public Safety, Gen. Docket 84-902, 59 RR 2d 910, 51 Fed. Reg. 4352 (1986).

³ In the Matter of Flexible Allocation of Frequencies in the Domestic Public Land Mobile Service for Paging and Other Services, CC Docket 87-120, 4 FCC Rcd. 6415 (1989) (hereinafter "Flexible Allocation of Frequencies").

band, facilitate the introduction of trunking technologies, and greatly enhance interoperability, both between the public safety agencies served by South Bay and with other neighboring jurisdictions. Moreover, as outlined in a recently filed amendment to South Bay's Application, use of the requested PLMS frequencies would also facilitate South Bay's participation in a new Department of Justice Program to develop innovative technologies to enhance and support community-oriented policing efforts. South Bay anticipates participating in this program in conjunction with the National Institute of Justice's Regional National Law Enforcement and Corrections Technology Center, located at El Segundo, California.⁴

Nonetheless, South Bay's request for waiver was perfunctorily denied by the Wireless Telecommunications Bureau. In the Matter of South Bay Regional Public Communications Authority, DA-96-589, Application File No. 415919, released Apr. 24, 1996 (hereinafter "Memorandum Opinion").⁵ An Application for review is currently pending before the Commission. South Bay recognizes that this rulemaking proceeding is not the correct forum to address the merits of its waiver request and pending Application for

⁴ See Amendment to South Bay Application, filed August 2, 1996.

⁵ In the same Memorandum Opinion, another application filed by Licensed Communications Services, Inc. ("LCI") to use certain of the frequencies for commercial purposes was also not granted. A copy of these comments is being served on LCI who has also filed an Application for review of the action.

review. However, also involved is a question of basic policy which is very germane to the subject matter of in this proceeding--specifically, the Commission's plan for addressing the serious radio spectrum requirements of public safety agencies around the country.

Under present policy, one element of this plan is the ability through the waiver process to address specific agency requirements on a case-by-case basis. As set forth in the Commission's Report and Plan, Meeting State and Local Government Public Safety Agency Spectrum Needs Through the Year 2010 (February 9, 1995), it is now Commission policy to "handle critical [public safety] spectrum shortages on a case-by-case basis, . . . [including using] spectrum that is allocated for other services." Report and Plan, ¶12. In many instances, arbitrary or outdated nationwide spectrum allocations leave some radio services with more spectrum than used in a particular area, while depriving other more critical services such as public safety of adequate spectrum. Rule waivers and area-specific reallocations of spectrum can help to alleviate that situation.

Based on South Bay's experience to date, however, it appears that this policy is not being effectively implemented by the Commission. Instead, the Commission appears to be brushing aside waivers filed by public safety agencies, including South Bay, on the grounds that waivers of spectrum allotment rules are not grantable, no matter what the circumstances presented, as a matter of policy.

In South Bay's situation, for example, its waiver request was denied on the basis that "the public interest is better served by increasing frequency availability through the rule-making process." Memorandum Opinion ¶ 8. See also, In the Matter of Applications of State of New Hampshire, DA-96-648, released May 3, 1996.

In implementing the recommendations of the PSWAC Report, the Commission should act to clarify this aspect of its policy and eliminate this apparent inconsistency. Under the Communications Act, the Commission has an obligation to give full and meaningful consideration to well justified requests for waiver, considering the priority need to allot spectrum for purposes that protect the safety of life and property as compared to the existing use (or non-use) of the frequencies. In the public safety area, the waiver process can be a very effective way to meet immediate, pressing needs, such as those shown by South Bay. It is a particularly necessary option for, as recognized in the Notice, the recommendations of the PSWAC Committee will take some time to implement and will not provide relief for "public safety agencies' more immediate spectrum needs." Notice, ¶ 87.

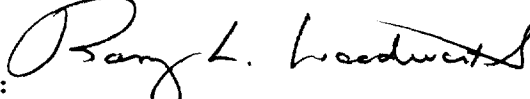
On the other hand, if the Commission is not going to implement a waiver policy in actual practice, it cannot have it both ways. If case-by-case requests from public safety agencies are not going to be given full and fair consideration, this should be made known in advance to all

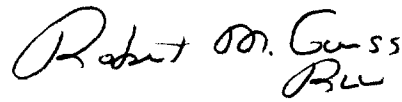
parties and the policy formally rescinded. While this would deprive the Commission of a valuable tool in its efforts to respond to immediate public safety spectrum requirements, it would at least save public safety agencies a great deal of time and public resources in making fruitless requests to the Commission.

South Bay supports the allocation of additional radio spectrum for public safety agencies nationwide, as recommended by PSWAC. In the meantime, however, the Commission's existing policy to meet immediate public safety needs through the waiver process, should be effectively implemented by the Commission whenever possible.

Respectfully submitted,

WILKES, ARTIS, HEDRICK & LANE,
Chartered

By: 
Ramsey L. Woodworth


By: Robert M. Gurss

1666 K Street, N.W., Suite 1100
Washington, D.C. 20006
202-457-7800

Attorneys for South Bay Regional
Public Communications Authority

October 21, 1996